

EXHIBIT 23

CONFIDENTIAL

In accordance with a protective order, the enclosure(s) shall be treated as confidential and shall not be shown to any person other than those persons designated in paragraph 8.2 of the paragraph order.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF WYOMING

Defendants.)

* SUBJECT TO A PROTECTIVE ORDER *

ZOOM/IN-PERSON DEPOSITION OF ESTHER
GEORGE, a Witness, taken remotely on behalf of
the Plaintiff before Peggy E. Corbett, CSR, CCR,
RDR, pursuant to Notice on the 9th day of
November, 2023, at the offices of the Federal
Reserve Bank of Kansas City, 1 Memorial Drive,
Kansas City, Missouri 64198.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 25

1 MR. MICHAELSON: Objection, form.

2 A. I don't recall advising anyone of that.

3 Q. (BY MR. ORTIZ) This draft bill that I
4 gave you, on Page 23, this would be of Exhibit 4,
5 actually has a provision that references, "If a
6 Special Purpose Depository Institution is denied
7 authorization to access any service required to
8 be made available under 12 USC 248(a), the
9 Attorney General shall on behalf of the State of
10 Wyoming and the institution commence a civil
11 action to enforce the requirements of USC
12 248(a)."

13 You were specifically told at some point
14 in time by your staff that was being built into
15 this bill, weren't you?

16 A. I was aware of this.

17 Q. Did you direct your staff to tell them
18 to take that provision out because it wouldn't be
19 necessary, that they would have to sue you?

20 A. I did not make any judgment for my legal
21 staff about how they should respond to that.

22 Q. Did you know that your legal staff asked
23 the legislators to take that provision out?

24 A. My understanding was our staff did not
25 believe this was an essential component to the

1 authorities.

2 Q. Did your staff tell that you they
3 advised the Wyoming legislature it wouldn't be
4 necessary to have that in there because it wasn't
5 going to be a problem?

6 A. My understanding was legally they did
7 not think that this provision was part of the
8 decision-making process for the bank.

9 Q. Tell me, explain to me what that means;
10 your staff told you really that they didn't think
11 what, explain that to me.

12 A. That the issue about denying
13 authorization, that the legal aspects that were
14 anticipated here about being denied were not part
15 of the considerations that the bank would be
16 making in decisions about a master account, so
17 their views would have been on the legal framing
18 of this and the legislation, and not the
19 authorities of the bank.

20 Q. So would it be fair to say that you knew
21 very early on it was a primary consideration that
22 SPDI charters be able to get master accounts, and
23 they were even saying, "We're going to sue you if
24 you try to deny us a master account," you knew
25 that early on, didn't you?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 27

1 MR. MICHAELSON: Objection, form.

2 A. I was aware of that.

3 Q. (BY MR. ORTIZ) So as you get through
4 this process a little bit, and I want to have you
5 walk through this, there came a point in time
6 that the SPDI legislation passed; is that right?

7 A. Yes.

8 Q. And then at least one or two
9 organizations at some point in time may have
10 applied for a master account?

11 A. That is correct.

12 Q. And I know we've somewhat talked about
13 it. There may be some time that an institution
14 called Kraken applied for a master account. Is
15 that something you were aware of?

16 A. I was aware of that.

17 Q. But primarily Avanti that became
18 Custodia, they were the ones that were really
19 pushing to get the master account, correct?

20 A. We were working directly with Custodia
21 on their request.

22 Q. How many times did you personally meet
23 with any representatives from the State of
24 Wyoming about the SPDI charter legislation and
25 these type of banks?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 29

1 Q. And the State of Wyoming Banking
2 Commission had always been very cooperative with
3 you at the Kansas City Fed when you wanted any
4 information or sharing of information regarding
5 State-chartered banks, agreed?

6 A. Yes, they would do so within their
7 authorities --

8 Q. Sure.

9 A. -- just as we would.

10 Q. Very good. So as you moved forward in
11 time with Custodia, there was never a belief or a
12 problem that you wouldn't be able to get
13 necessary information from Custodia's supervisory
14 authority, which would be the State Banking
15 Commission, agreed?

16 MR. MICHAELSON: Objection, form.

17 A. It would not have been clear to me that
18 the rules that governed how we supervised
19 State-chartered member banks with them were going
20 to apply in the same way here, since we were not
21 part of the supervision of those institutions.

22 Q. (BY MR. ORTIZ) Well, but that's part of
23 the whole dual banking system, isn't it, that
24 State-chartered banks are supervised by their
25 chartering authority, correct?

1 A. That is correct, with Federal
2 supervision in both cases.

3 Q. So let me make sure I am understanding
4 what you're telling me. You're telling me that
5 even if it's a State-chartered non-member bank,
6 you have some Federal supervisory authority over
7 that?

8 A. A State-chartered institution must
9 select a Federal supervisor, and it is either the
10 Federal Reserve, or it is the Federal Deposit
11 Insurance Corporation.

12 Q. So early on Custodia made it very clear
13 that they would let you supervise them, agreed?

14 A. At the time they asked for the master
15 account, they had not expressed membership
16 interest, in being supervised by the Federal
17 Reserve.

18 Q. Well, I think we're talking two
19 different things.

20 A. Okay.

21 Q. You don't have to be a member bank of
22 the Fed, do you, if you're State-chartered? You
23 don't have to be a member bank, correct?

24 A. That is correct.

25 Q. All right. Now, obviously, you have

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 31

1 supervisory authority over member banks.

2 A. Correct.

3 Q. I thought you just told me you also have
4 supervisory authority over a State-chartered
5 non-member bank.

6 MR. MICHAELSON: Object.

7 A. We do not.

8 Q. (BY MR. ORTIZ) You do not. But you're
9 saying some Federal authority, other than the
10 State of Wyoming as the chartering authority, has
11 to supervise that?

12 A. Our dual banking system is based on a
13 national charter issued by the comptroller of the
14 currency, or the 50 states can issue their own
15 charter, in which case they apply to the Federal
16 Reserve or the FDIC for their Federal
17 supervision.

18 Q. Okay.

19 A. So all State-chartered institutions come
20 with Federal supervision in the current legal and
21 regulatory framework.

22 Q. So is it your position here today that
23 Custodia never acknowledged that they would be
24 supervised by you -- by the Kansas City Fed or
25 the FDIC?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 32

1 MR. MICHAELSON: Objection, form.

2 A. The nature of the charter allowed the
3 State of Wyoming to be the sole supervisor of
4 this institution.

5 Q. (BY MR. ORTIZ) Okay. Did you ever make
6 an offer or a request to Custodia that they just
7 willingly agree to let the Kansas City Fed also
8 have a dual supervisory role?

9 A. I did not suggest that at any time.

10 Q. Why not?

11 A. That would have been inconsistent with
12 the authorities --

13 Q. Why?

14 A. -- that existed.

15 Q. Why?

16 A. Because the legislation creating the
17 SPDI charter did not refer to it as a bank that
18 would have Federal supervision. It was
19 designated as State-only supervised.

20 Q. Was that a policy question that you
21 needed decided by the Board of Governors, whether
22 you could even offer that?

23 A. There was a threshold question to me
24 about whether this charter was eligible for
25 access to an account at the Federal Reserve.

1 Q. Whether it was a quote "eligible
2 depository institution"?

3 A. That's correct.

4 Q. If it was, if it was determined to be an
5 eligible depository institution, which we know
6 sometime it was determined to be that, you
7 already had existing policies and procedures in
8 place at the Kansas City Fed to provide a master
9 account for State-chartered banks or
10 State-chartered depository institutions, correct?

11 MR. MICHAELSON: Objection, form.

12 A. If an institution is eligible, then our
13 next step is to evaluate the risk parameters of
14 the institution requesting the account.

15 Q. (BY MR. ORTIZ) Based on the policies
16 and procedures you had in place when Custodia
17 applied for its master account, agreed?

18 A. Yes.

19 Q. Those are the policies and procedures
20 that should have been followed to determine
21 whether Custodia was granted its master account,
22 agreed?

23 MR. MICHAELSON: Objection, form.

24 A. We were following those procedures at
25 the outset.

1 Q. (BY MR. ORTIZ) Who told you that?

2 A. It would be my assumption based on my
3 briefings with the staff that they were looking
4 at their existing procedures around the nature of
5 this novel institution.

6 Q. Did you ever, is there an actual master
7 account application file that's kept in some type
8 of server or file point system that applies to
9 Custodia?

10 MR. MICHAELSON: Objection, form.

11 A. I believe there is a database that
12 Reserve Banks are required to populate, noting
13 who has accounts, and the status of those
14 accounts.

15 Q. (BY MR. ORTIZ) Have you ever gone and
16 actually looked at the status of Custodia in the
17 concept of the policies that applied and how far
18 they got in the application process, like what
19 was populated in this electronic file?

20 MR. MICHAELSON: Objection, form.

21 A. I have not looked at the actual
22 database.

23 Q. (BY MR. ORTIZ) Like for instance, do
24 you know if a risk rating was ever given to
25 Custodia?

1 Q. (BY MR. ORTIZ) In what timeframe, do
2 you remember reaching out to the Board of
3 Governors on that question?

4 A. I would have reached out to them early
5 on, both at the point we knew that the
6 legislation was being approved, at the point that
7 we received the request from Custodia for access
8 to a master account.

9 Q. So you reached out to the Board of
10 Governors to answer the question for you as to
11 whether Custodia's proposed activity was legally
12 permissible?

13 A. I reached out to the Board of Governors
14 to inform the decision we were asked to make
15 about granting a master account, and one of the
16 factors, a couple of factors that were important
17 was the threshold decision of legal eligibility
18 for the kind of charter that had been created in
19 Wyoming, and then a broader question of is this
20 activity or the proposed activities here
21 considered permissible?

22 Are they falling within the regulatory
23 and legal perimeters that we have set up for
24 other depository institutions?

25 Q. So who did you reach out to at the Board

1 of Governors to answer those questions for you?

2 A. Our staff would have had long-standing
3 relationships with the Board staff, who would
4 have dealt with these issues both at a policy
5 level, at a risk level, and that's where the
6 initial conversations took place.

7 Q. So let's kind of break down when you're
8 analyzing whether Custodia could get a master
9 account in your view, tell me the specific issues
10 that you needed the Board Of Governors to make a
11 decision on versus something you think you can do
12 at the Kansas City Fed level.

13 MR. MICHAELSON: Objection, form.

14 Q. (BY MR. ORTIZ) So I think you talked
15 about legal permissibility; is that right?

16 A. Right. So as we approached this issue
17 there were really in my mind three parts to this.
18 One was the threshold issue of legal eligibility.
19 The entity that normally issues routing transit
20 numbers had flagged this for the Reserve Bank
21 without issuing. They had asked the question
22 about whether the institution was legally
23 eligible. So that was a threshold question for
24 us.

25 The second question was the nature of

1 the activity itself, the framework with which
2 that activity would occur; in other words a
3 State-chartered entity that did not have Federal
4 supervision, and we were seeking the Board's
5 input as part of our decision-making to
6 understand was that raising broader policy issues
7 that we would need to take into account.

8 Q. So the Board has to make --

9 MR. MICHAELSON: Hold on. Let the
10 witness finish.

11 Q. (BY MR. ORTIZ) Go ahead, I'm sorry.

12 A. And the third question which was one
13 that we always involve is assuming those things
14 were affirmed, then we would make our independent
15 risk assessment around whether the institution
16 should be granted access.

17 Q. Were there other considerations that the
18 Board had to weigh in on that you could not do on
19 your own, other than what you have just described
20 for me?

21 A. Those were the general issues,
22 interpretation of law as it related to legal
23 eligibility, and consistency with a broader
24 policy framework, regulatory framework.

25 Q. How about the whole issue of monetary

1 policy and how it would affect the system? Was
2 that an issue that had to be determined for
3 Custodia?

4 MR. MICHAELSON: Objection, form.

5 A. So the Board of Governors policy
6 objectives would have included effective
7 implementation of monetary policy. We would have
8 been in a position to make some judgments about
9 whether we thought there was an intersection with
10 that policy objective.

11 Q. (BY MR. ORTIZ) Does the Board make the
12 determination on any monetary control issues?

13 MR. MICHAELSON: Objection, form.

14 A. I'm sorry, I don't understand; any
15 monetary control issues or monetary --

16 Q. (BY MR. ORTIZ) If that's potential
17 issue that deals with monetary control in the
18 system, is that a determination made by the Board
19 versus you at the Kansas City Fed?

20 A. I'm sorry, I want you to clarify. If
21 you're talking about monetary control as in the
22 Monetary Control Act interpretation, or you're
23 talking about monetary policy implementation?

24 Q. I think, I've seen it used, I've seen
25 the term monetary control used in the documents

1 and with other witnesses we've deposed on your
2 staff that have talked about monetary control
3 determinations are made by the Board, but is that
4 not a term you're familiar with?

5 A. I guess the way I think about it is we
6 have a legal responsibility under the Monetary
7 Control Act that talks about how we provide
8 financial services.

9 The implication in a financial system
10 for how money flows through it can have
11 implications for both financial stability and for
12 the conduct of monetary policy, which is the
13 purview of the Federal Open Market Committee.

14 So as we think about issues that could
15 impinge on any of those policy objectives, it
16 would not be unusual to consult with the Board of
17 Governors about how they saw those same issues.

18 Q. You would let the Board of Governors
19 make the determination on those issues, like
20 financial stability, correct?

21 MR. MICHAELSON: Objection, form.

22 A. It was not clear there was a decision to
23 make about financial stability. It would have
24 been a factor to consider in the judgments we
25 were trying to make, and so I would have listened

1 to their views on whether an issue created issues
2 of stability or instability in the financial
3 system.

4 Q. (BY MR. ORTIZ) What other issues with
5 the Board of Governors weigh in on, other than
6 the ones we've discussed now, what other would be
7 policy considerations that the Board of Governors
8 needed to give you a "yes" or a "no" on?

9 MR. MICHAELSON: Objection, form.

10 A. So the Board of Governors would have
11 been responsible for the regulatory framework for
12 the supervision of state-member banks and bank
13 holding companies.

14 We would have consulted on safety and
15 soundness relative to that regulatory framework
16 that is theirs.

17 Q. (BY MR. ORTIZ) So you're telling me the
18 Board of Governors really could make a
19 determination that they were not comfortable with
20 the State of Wyoming being the regulatory
21 authority over the State charter, and therefore,
22 were simply not going to agree to give you
23 access; is that what you're telling me?

24 MR. MICHAELSON: Objection, form,
25 misstates testimony.

1 A. That is not what I said.

2 Q. (BY MR. ORTIZ) Then tell me what you
3 mean by that. If they are interpreting the
4 framework, the supervisory framework over
5 Custodia, what does that mean then?

6 A. The Board of Governors was not
7 determining the supervisory framework. Their
8 authority resided with State-chartered banks that
9 were members, and under the Federal Reserve Act
10 it is the Board of Governors' responsibility to
11 establish the regulatory framework for those
12 institutions.

13 I was not aware they had any authority
14 in the case of the Wyoming SPDI charters.

15 Q. Well, and that's what I'm surprised
16 then, that did you think the Board of Governors
17 was advising you as to whether this was even a
18 viable supervisory authority set-up, since it was
19 solely going to be supervised by the State of
20 Wyoming?

21 A. I was not seeking their input on that.

22 Q. Were you making your own determination
23 on that?

24 A. It would have been a factor I was
25 considering as I talked to Albert Forkner about

1 how they would carry out their supervision.

2 Q. Were you getting policy consideration
3 advice from the White House or representatives of
4 the White House about what they thought about
5 this type of depository institution that would be
6 dealing with crypto-assets?

7 MR. MICHAELSON: Objection, form.

8 A. I had no interactions with the White
9 House.

10 Q. (BY MR. ORTIZ) Did the White House
11 pronouncements throughout this sequence of
12 events, is that something you considered at any
13 time?

14 MR. MICHAELSON: Objection, form,
15 foundation.

16 A. We were considering a number of public
17 announcements that were coming both out of
18 Congress, that were coming out of the Financial
19 Stability Oversight Committee, that were coming
20 out of the Bank for International Settlements in
21 Basel, Switzerland.

22 Q. (BY MR. ORTIZ) So you were waiting to
23 see what, I guess, what the public leanings were
24 from those different outside agencies or
25 branches, and that was going to affect your

1 decision in regards to giving Custodia a master
2 account?

3 MR. MICHAELSON: Objection, form.

4 A. I think it's fair to say that I was
5 aware this was potentially precedent-setting, and
6 that this was an evolving landscape in terms of
7 the considerations that were being given both
8 legislatively by Congress and the banking
9 agencies, and I thought it was a relevant factor
10 for me to take in before making a decision about
11 this master account.

12 Q. (BY MR. ORTIZ) State-chartered banks,
13 depository institutions by design are typically
14 more innovative in nature than the existing
15 Federal system banks, agreed?

16 A. There are some cases where I'm sure that
17 could be cited. I'm not sure that is a universal
18 characterization.

19 Q. Wasn't that the whole concept of having
20 a dual banking system, to allow innovation at the
21 State level, from State-chartered institutions?

22 A. I believe it has been a strength of our
23 financial system to have the dual banking system
24 to allow for innovation.

25 Q. But what you're just describing for me

1 is Federal efforts to thwart that innovation,
2 right?

3 A. Actually, I didn't see any evidence of
4 trying to thwart innovation.

5 Q. Would it be fair to say -- were you
6 against this throughout the process? You didn't
7 want to give them a master account from the time
8 you first heard the concept until all the way to
9 the very end? Was that your mindset?

10 MR. MICHAELSON: Objection, form.

11 A. I don't believe it's a fair
12 characterization to say I didn't want this. I
13 wanted to understand the nature of this
14 innovation, and whether it would be in the public
15 interest, whether it was consistent with our
16 existing framework and authorities, to be
17 prepared to make a judgment about access.

18 Q. (BY MR. ORTIZ) Your staff has testified
19 that you were against giving a master account at
20 every step in the process; is that true?

21 MR. MICHAELSON: Objection, form,
22 misstates prior testimony by other witnesses.

23 Q. (BY MR. ORTIZ) Well, Ms. Hazen and
24 Christi May-Oder both said that you were against
25 it, against giving a master account at the

1 a conversation with Tara Humston where she said,
2 "Listen, I don't think there's any show-stoppers
3 here. It looks good to go"?

4 MR. MICHAELSON: Objection, form.

5 A. I do remember I had multiple
6 conversations with Tara. The term "show-stopper"
7 I recall was in the context of, "Do you have any
8 more information that you need?"

9 Q. (BY MR. ORTIZ) Okay. Explain that to
10 me.

11 A. So in our consideration of factors that
12 will influence our decision, our understanding of
13 risk, we will go back to the requesting party, to
14 the applicant to fill any gaps in information
15 that we think we don't have.

16 Those might be policies. They might be
17 a business plan. They may be artifacts that we
18 think are relevant to our decision-making.

19 Q. (BY MR. ORTIZ) So did Tara tell you
20 that she told Caitlin Long, "There's no
21 show-stoppers with your application," did she
22 report that to you?

23 A. I was aware of that frame, and in the
24 context of my conversation with Tara, my
25 understanding was, "Do we have all the

1 information from Custodia that is relevant to our
2 analysis?"

3 Q. And the report to you was, "Yes, and I
4 don't see any show-stoppers?"

5 A. I am aware of that, yes.

6 Q. That was her comment back to you?

7 A. That was her comment.

8 Q. And Tara, and I don't, just
9 colloquially, was she kind of like your
10 right-hand person on a lot of these issues?

11 A. Tara reported to me as the head of our
12 Division of Bank Supervision.

13 Q. Would it be fair to say you interfaced
14 with her with direct contact as much as anyone on
15 your team?

16 A. I did have regular status meetings with
17 Tara.

18 Q. Is that something where when you're in
19 town, you probably see and talk to her daily?

20 A. It may not be every day, but we worked
21 on the same floor and I could contact her.

22 Q. Is she one of those people, did you have
23 like a select few that had your cell number and
24 had the green light to call you any time they
25 wanted to?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 63

1 A. My entire management team had my
2 cellphone number.

3 Q. So Tara had that kind of access, if she
4 had questions, she would just call you on your
5 cell and run it by you?

6 A. That would be true.

7 Q. I want to ask you about conversations
8 with Governor Gordon. Did you have some
9 follow-up conversations with Governor Gordon
10 directly about Custodia's application for a
11 master account?

12 A. Yes.

13 Q. Tell me about what you recall about
14 that.

15 A. My recollection is Governor Gordon
16 wanted to understand the process, what is the
17 process, the timing. Governor Gordon was hearing
18 from the banking department, he was hearing from
19 Custodia, and was trying to have a full picture
20 of how this master account review was being
21 conducted.

22 Q. He expressed to you he was really
23 concerned about the delays, didn't he?

24 A. In our conversations, he wanted to know
25 timing and considerations for this process.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 64

1 Q. Because the Wyoming Division of Banking
2 was a bit frustrated with the delays. That got
3 back to you, didn't it?

4 A. I was not aware they were frustrated
5 with delays.

6 Q. Well, then tell me the context of
7 Governor Gordon reaching out to you for a
8 conversation to understand the timing of this
9 then.

10 A. Because Custodia was concerned about the
11 timing my assumption was that that was where he
12 was getting the questions, and wanted to hear
13 first-hand from us how we were handling this
14 request.

15 Q. And when you say Custodia was concerned
16 about the timing, you mean Custodia was concerned
17 about how long this was taking, correct?

18 A. Custodia had raised that question
19 several times.

20 Q. Governor Gordon also talked to you about
21 the fact that it was important that these type of
22 chartered SPDI institutions be able to get a
23 master account. He talked to you directly about
24 that, as well, didn't he?

25 A. I don't remember Governor Gordon talking

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 65

1 about the importance of the master account per
2 se. Governor Gordon knew it was important for
3 these institutions to begin to operate, and that
4 they very much wanted a master account at the
5 Kansas City Fed.

6 Q. Sure. Well, Governor Gordon expressed
7 to you that in order for these institutions to be
8 viable, they needed direct access to Fed services
9 through a master account.

10 A. Governor Gordon did not indicate that to
11 me at any time.

12 Q. Never?

13 A. Not that they would be -- not that they
14 would not be viable without access to a master
15 account.

16 Q. Did you ever have that conversation with
17 him and tell him you wanted them going a
18 different route?

19 A. I specifically had that conversation
20 with Albert Forkner in the State Banking
21 Department to ask on several occasions: Was
22 access to a master account at the Kansas City Fed
23 the only route to viable operations for these
24 entities? And each time the answer was: No, it
25 is desirable, but it is not required for them to

1 begin operations."

2 Q. So Albert Forkner said, "I guess if they
3 get a correspondent bank relationship, they could
4 technically be viable." That's what he told you,
5 wasn't it?

6 A. That was the nature of his response.

7 Q. But you knew from Custodia that that
8 really wasn't an option for long-term viability
9 because of the fees they had to pay a
10 correspondent bank, and that's why the direct
11 access to a master account was so important,
12 correct?

13 A. We understood from Custodia that they
14 wanted a master account at the Kansas City Fed.

15 Q. Because of what I just said, because of
16 the fees they would have to pay a correspondent
17 bank to go through their master account, you knew
18 that, as well, didn't you?

19 A. I knew they had their reasons around why
20 they wanted a master account versus using a
21 correspondent bank.

22 Q. So is what I said incorrect? What were
23 the reasons you understood that they wanted their
24 own master account?

25 A. My understanding of their -- because

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 67

1 they had requested it, and I do not recall asking
2 their motivation, although going through a
3 third-party likely did involve other kinds of
4 costs.

5 Q. Getting back to what Tara Humston
6 reported to you in her conversations with Caitlin
7 Long, the conversations with Caitlin Long where
8 she reported or she said, "I told her there were
9 no show-stoppers, "was in the context of Caitlin
10 saying, "Are we going to be able to get our
11 master account?" That was the context of that
12 conversation, true?

13 MR. MICHAELSON: Objection, form.

14 A. I wasn't involved in the conversation,
15 so I can't speak to that.

16 Q. (BY MR. ORTIZ) So you're not sure if
17 that's true or not?

18 A. I wasn't party to the conversation.

19 Q. All you know is that it was reported
20 back to you by Tara that she had conversations
21 with Caitlin and told her there were no
22 show-stoppers. That's basically what you know
23 about that?

24 A. That was my understanding.

25 Q. So many people have testified under oath

1 ever get a master account, wouldn't it?

2 A. It was clear that the third tier raised
3 a number of questions about how we would go about
4 due diligence in granting an account under that
5 scenario.

6 Q. And that's a nice way of saying made it
7 virtually impossible that you could get a master
8 account if you were Tier 3, agreed?

9 A. The hurdle would have been high.

10 Q. Can we agree candidly, virtually
11 impossible, true?

12 A. I would not say virtually impossible.
13 The very reason the tier was laid out there was
14 to describe the amount of due diligence, and I
15 think to heightened awareness of the nature of
16 the concerns.

17 Q. Did you know as being part of the
18 committees discussing this that the bar was going
19 to be set very high, and there were going to be a
20 tier system in place well before it was
21 promulgated?

22 MR. MICHAELSON: I just want to
23 interject here. Obviously, the Board has
24 asserted deliberative process privilege over the
25 development of the guidelines, and the S letter

1 that's disputed before the Court. It sounds to
2 me like that question is perhaps trying to invade
3 the Board's privilege there, so I'd ask you to
4 reframe it with that in mind, and bear that in
5 mind when you answer.

6 Q. (BY MR. ORTIZ) I'm not asking about the
7 deliberative process that went into it, I'm just
8 asking didn't you know well ahead of time that
9 there was going to be a tier system before it was
10 actually published that way?

11 MR. MICHAELSON: Objection, form,
12 same objection, but go ahead and answer.

13 A. That there would be a tiering system was
14 not part of understanding the due diligence that
15 would be required here. I think early on we
16 understood that any of these novel or unusual
17 cases required a different level of scrutiny, and
18 that was long-standing, it was well before these
19 guidelines were promulgated and we understood how
20 tiering would be described.

21 Q. (BY MR. ORTIZ) You understood from
22 being on the committee that the bar was going to
23 be raised very high for an institution like
24 Custodia to ever qualify --

25 MR. MICHAELSON: Objection, form.

1 Q. (BY MR. ORTIZ) -- weren't you?

2 A. I already knew the bar was going to be
3 high in terms of the factors we'd have to
4 consider. That document was codifying for public
5 dissemination.

6 Q. Why did you tell Custodia that they had
7 to wait until the guidelines were finalized
8 before you could process their request?

9 A. I don't recall telling them they would
10 have to wait. I would likely have said, "These
11 guidelines would be a factor in our
12 decision-making."

13 Q. Well, in fact, have you seen the
14 correspondence from your staff back and forth
15 that indicates that there was going to be a pause
16 or a hold on considering Custodia's application
17 until the new guidelines got put in place?

18 MR. MICHAELSON: Objection, form.

19 A. It would have been reasonable, knowing
20 that something was pending, to take that into
21 account in our decision-making, and not move
22 ahead on something we understood was yet to come.

23 Q. (BY MR. ORTIZ) You would agree that
24 that is basically moving the bar to a different
25 level? If Custodia under your existing

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 92

1 Q. (BY MR. ORTIZ) Did you direct your
2 staff to answer those particular questions about
3 the OCC's letter saying that this is legally
4 permissible activity and whether you were
5 obligated to give them a master account?

6 A. So these were the same issues that we
7 were engaged in as we asked the Board of
8 Governors to give us insight on the policy
9 aspects here and on the threshold question of
10 legal eligibility, including the nature of the
11 OCC's charter.

12 Q. So were you trying to stall for time
13 because you really didn't want to answer the
14 questions about whether you had to give them a
15 master account?

16 A. I was not stalling for time. I was --
17 my objective was to collect information and to
18 inform a decision that I thought was
19 consequential for not only Custodia, but for
20 those that would follow.

21 Q. Would it be a concern of others, if you
22 gave a master account to Custodia, it was a
23 weighing concern that you might have others that
24 would want the same thing?

25 A. We understood that to say to endorse one

1 would be setting a precedent for how others would
2 understand their eligibility and access
3 expectations.

4 Q. Philosophically did you not want a bunch
5 of SPDI charters having access to the Federal
6 Reserve system?

7 MR. MICHAELSON: Objection, form.

8 A. There was never a point that we had a
9 preference one way or the other. We were really
10 trying to understand the nature of the charter
11 and to fulfill our responsibilities for providing
12 financial services to eligible institutions.

13 Q. (BY MR. ORTIZ) Let me hand you what we
14 already have in evidence as Exhibit 7,
15 Ms. George. We are now say 4 or 5 months forward
16 in time from the last exhibit.

17 These are communications between Tara
18 Humston and you. Is this a document you saw
19 prior to today that you have prepared for?

20 A. I believe I did see this.

21 Q. So I want to go to the middle of that
22 paragraph when it's from Tara to you starting
23 with the word, "Meeting." Well, let's go ahead
24 in the sentence before that. "We would outline a
25 few key areas for discussion, but not requesting

1 they submit any additional information to us.
2 Meeting with them might also buy us some time
3 while the system discussions are getting geared
4 up. I think we would be pretty careful about
5 discussing these system groups that are starting
6 up, and just say we are engaged with our
7 colleagues to consider not only SPDI charters,
8 but also other non-traditional charter types that
9 may be requesting a master account."

10 Why did you want to hide from Custodia
11 that you were waiting for these system groups to
12 get up and running and tell you what you should
13 be doing?

14 MR. MICHAELSON: Objection, form.

15 A. So at no point were we interested in
16 hiding information from Custodia.

17 Q. (BY MR. ORTIZ) Well, what does that
18 mean then, to say that: We want to buy some
19 time? Buying some time means delay, doesn't it?

20 A. So Custodia was regularly inquiring
21 whether they had provided the information that we
22 needed from them --

23 Q. Okay.

24 A. -- and perhaps with an understanding
25 that that would lead to the decision, and I think

1 Q. And is Lael telling you that she's
2 expressed positive reaction to the Wyoming
3 supervisory framework, as consistent with the
4 OCC?

5 MR. MICHAELSON: Objection, form.

6 A. My recollection is she is characterizing
7 Senator Lummis'.

8 Q. (BY MR. ORTIZ) Then decipher that next
9 sentence for me.

10 A. Is your question what does it say?

11 Q. Yes.

12 A. "With Libra designation as DM."

13 Q. Say that again, ma'am. I'm sorry.

14 A. "With Libra designation as DM."

15 Q. What's Libra?

16 A. Libra would have been something that
17 Facebook had talked about issuing.

18 Q. So is that some type of currency or
19 something?

20 A. It would have been part of the crypto
21 currency.

22 Q. Okay, and then, "Designated as DM," is
23 that digital money?

24 A. I do not recall what that designation
25 means.

1 Q. Then the next sentence, tell me if I'm
2 reading this correctly, "Lael feels we don't have
3 authority to say no to request." This is dealing
4 with Custodia's application for a master account,
5 isn't it?

6 A. We were talking about the threshold
7 issue of eligibility for a master account.

8 Q. And she's saying you don't have
9 authority to say no to the request, right?
10 That's her interpretation to you.

11 MR. MICHAELSON: Objection, form.

12 A. My recollection is we were talking about
13 a decision on legal eligibility for access to a
14 master account and at this time we did not have
15 that.

16 Q. (BY MR. ORTIZ) Well, Custodia was not
17 requesting an interpretation on legal ability or
18 permissibility or eligibility. Custodia was
19 requesting from you a master account access,
20 right?

21 A. That is correct.

22 Q. And the context of this, "Lael feels
23 like we don't have authority to say no to the
24 request," that's solely dealing with the master
25 account, correct?

1 A. We were talking about the master account
2 on the basis of that threshold issue.

3 Q. Because this doesn't say anything about
4 whether there's a legal determination or anything
5 like that. She's talking about the authority to
6 say no to their request. That's what the context
7 of this conversation with Lael Brainard, correct?

8 MR. MICHAELSON: Objection, form,
9 asked and answered. Go ahead.

10 A. This would not be a complete transcript
11 of our conversation, so the context was around
12 the threshold issue of legal eligibility, one
13 that had been raised by Acuity in issuing the
14 routing transit number.

15 Q. (BY MR. ORTIZ) And I realize it's not a
16 whole transcript, but you felt it was important
17 to write in your note what Lael was telling you
18 about her belief about you not having authority
19 to deny, agreed?

20 A. No, this was not about my authority to
21 make a decision on this account. This was about
22 the range of issues that we were contemplating,
23 and again whether a threshold issue about
24 eligibility or the broader policy questions that
25 needed to be addressed in my view.

1 Q. Well, let's look at the next sentence.
2 After you document that Lael says, "We don't have
3 authority to say no to the request," you
4 document, "I pushed back and argued: We need
5 broader policy issue addressed."

6 A. Uh-huh.

7 Q. A broader policy issue has nothing to do
8 with legal -- or eligibility. You were trying to
9 push back to see if there was something broader
10 about the whole concept of holding digital
11 assets. That's what this is saying, isn't it?

12 MR. MICHAELSON: Objection, form.

13 A. So again, there were multiple questions
14 I was asking the Board, and their authorities to
15 interpret legal eligibility was one question, and
16 that was a threshold question before we could
17 pursue these broader policy issues which involved
18 a novel charter, an uninsured institution having
19 access to the Federal Reserve payment system, and
20 the nature and risks associated with these
21 activities as an appropriate banking activity.

22 Q. (BY MR. ORTIZ) Lael told you under the
23 Monetary Control Act, she felt like you had to
24 give them a master account, didn't she?

25 A. Lael did not say that to me.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 107

1 Q. What did she say when you pushed back
2 and said, "No, we need broader policy issues
3 addressed," what did she say when you did that
4 and pushed back on her?

5 A. I don't remember Lail's answer in this
6 conversation, but we were working on -- through
7 these other forums, trying to understand how to
8 think about these broader policy issues.

9 Q. So I want to have you turn the page to
10 the second page on this exhibit, and for
11 everybody listening in, the first page is
12 Bates-stamped 17834, the second page 17835, and
13 then we have a date at the top, 3/9/21, so this
14 would have been 3 days before this call with Lael
15 Brainard, correct?

16 A. Yes.

17 Q. It says, "Jeff Walker, Board Of
18 Governors, work on SPDI." Is that what that
19 says?

20 A. Yes.

21 Q. Who's Jeff Walker?

22 A. Jeff Walker worked for the Board of
23 Governors in their payments policy area.

24 Q. And does it say, "Targeting late
25 April to release FRN"?

1 an answer, right?

2 MR. MICHAELSON: Objection, form.

3 A. Custodia was not a bank that was
4 supervised by the Federal Reserve.

5 Q. (BY MR. ORTIZ) I understand that. But
6 the whole -- the prediction of what would happen
7 if you unfairly wouldn't give them a decision or
8 denied them was that all the established banks
9 would take their business model, jump into the
10 marketplace and start conducting these
11 activities. That's exactly what happened, isn't
12 it?

13 A. It's not clear that's happened. This
14 was a different business model.

15 Q. What was different about it?

16 A. This was a uniquely chartered
17 institution in the State of Wyoming that did not
18 provide for Federal supervision.

19 Q. Well, that's the supervision aspect.
20 What's different about Custodia's business model
21 of what they wanted to do and what all of these
22 other banks by August of '22 are doing. Other
23 than the size of the bank and them having Federal
24 supervision, there's no difference you can point
25 me to, is there?

1 MR. MICHAELSON: Objection to form.

2 A. I think one important difference was the
3 narrow and high level of concentration in this
4 activity for the entity.

5 Q. (BY MR. ORTIZ) Does that mean that the
6 fact that Custodia wanted to specialize in this?

7 A. They were highly concentrated around a
8 narrow activity.

9 Q. So specializing in a legally permissible
10 activity that has been embraced by the big banks,
11 are you saying that's a bad thing?

12 MR. MICHAELSON: Object to form.

13 A. A high level of concentration poses a
14 different level of risk.

15 Q. (BY MR. ORTIZ) How did you know that if
16 you didn't even know what volumes of transactions
17 were being done by any of the other member banks
18 that are doing this? How did you know that
19 Custodia's risk would be any different than any
20 of the member banks if you didn't look at the
21 volume?

22 A. So a couple of ways. I knew from my
23 experience that one of the highest indicators of
24 failure can be a highly concentrated institution
25 around a particular asset class, and that had

1 been borne out over history, about why we care
2 about highly concentrated institutions.

3 And the second was the Kansas City Fed
4 team had gone on in to look at the risk profile
5 of Custodia, and saw inadequate compliance and
6 risk management practices in place around this
7 very concentrated activity. Those were the
8 indicators that I was looking at.

9 MR. ORTIZ: I'm sorry, did you say
10 adequate or inadequate?

11 THE WITNESS: Inadequate.

12 Q. (BY MR. ORTIZ) That's not what your
13 team told you early on in the process, though,
14 did they? Your team told you early on that there
15 was a robust supervisory framework in place with
16 an experienced management team and that your risk
17 overall was low to the system. Your team told
18 you that within the first year, didn't they?

19 A. I do not recall my team telling me that.

20 Q. If that's in the paperwork that we have
21 in this case, we should be able to rely on that
22 that information from your team that's evaluating
23 this, was getting to you, correct?

24 MR. MICHAELSON: Objection, form
25 and foundation.

1 A. I don't recall that assessment. That
2 would have been core to our analysis.

3 Q. (BY MR. ORTIZ) Do you know why Rob
4 Triano left Kansas City Fed?

5 A. I do not know Rob Triano.

6 Q. Who did you think was your most
7 experienced person within this master account
8 assessment that had knowledge with blockchain
9 technology or crypto-currency custody issues?

10 A. I was relying on Tara and Judith Hazen
11 to source expertise around the work that we were
12 asked to do.

13 Q. Does "source expertise" mean to go
14 outside the Kansas City Fed?

15 A. It could have been outside the Kansas
16 City Fed.

17 Q. Let me change topics with you a little
18 bit. Do you know Vice-Chairman Barr?

19 A. Yes.

20 Q. How often in the general scheme of
21 things would you be interacting with him?

22 A. I would interact with Vice-Chairman Barr
23 infrequently.

24 Q. Were you aware that he wanted to be
25 briefed and brought up to speed on Custodia's

1 master account issues in November of 2022?

2 A. I would not have had a reason to be
3 aware of that.

4 Q. Did you ever speak to him about either
5 before or after he had a meeting where he was
6 briefed on the status of Custodia's master
7 account application and where it stood?

8 A. I don't remember such a meeting,
9 although Vice-Chairman Barr and I might have met
10 on a number of supervisory matters.

11 Q. Did you ever have any communication from
12 your staff indicating what Vice Chair Barr was
13 saying about Custodia's master account
14 application and whether it should be granted or
15 denied?

16 MR. MICHAELSON: Objection, form.

17 A. I do not recall getting any feedback
18 about his views.

19 Q. (BY MR. ORTIZ) Do you recall getting
20 any feedback from either your staff or someone at
21 the board that Vice Chair Barr had concerns one
22 way or another of the timing of when the decision
23 would be made on Custodia's master account?

24 A. Vice Chairman Barr did not raise any
25 questions with me about the timing.

1 Q. Did you know your staff was monitoring
2 what was happening with Vice Chair Barr in the
3 briefing and getting feedback, did you know that
4 one way or another?

5 MR. MICHAELSON: Objection, form.

6 A. I would not have known that.

7 Q. (BY MR. ORTIZ) At some point in time
8 didn't you receive information from the Board of
9 Governors that the decision on the master account
10 needed to be made in conjunction with the Board
11 making their decision on membership?

12 MR. MICHAELSON: Objection to form.

13 A. I did not get that direction.

14 Q. (BY MR. ORTIZ) In fact, didn't your
15 team tell you that they knew you should not get
16 out of sync with the Board of Governors in regard
17 to your decision and that you should not make
18 your decision until they were ready to make their
19 decision on membership?

20 MR. MICHAELSON: Objection to form.

21 A. No one directed the timing of my
22 decision that the bank was about to make relative
23 to the Board's decision. We would not have had
24 control over the timing of their decision.

25 Q. (BY MR. ORTIZ) Are you saying it's just

1 coincidence that your denial to Custodia on
2 January of 27th coincided with their notification
3 of denial of membership on the same day, and also
4 coincided with the White House's pronouncement on
5 the dangers of crypto, are you saying that's all
6 coincidence that that happened on the same day?

7 MR. MICHAELSON: Object to form.

8 A. I'm saying we had made our decision
9 about responding to the master account request,
10 and the timing of that letter I discussed with
11 our general counsel to make sure we were aware of
12 any other communications that would be coming
13 out.

14 Q. (BY MR. ORTIZ) Did you ever advise your
15 staff that whatever decision was made had to be
16 in sync with the Board of Governors on
17 membership, that you could not contradict what
18 they were doing, so if they granted membership,
19 you would grant master account access. If they
20 denied membership, you would deny master account
21 access?

22 MR. MICHAELSON: Objection, form.

23 Q. (BY MR. ORTIZ) Did you ever give that
24 directive?

25 A. I did not give that directive.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 182

1 Q. Do you know if your staff was given that
2 directive, that that's how this was to work?

3 MR. MICHAELSON: Object to form.

4 A. I don't believe my staff received any
5 directives. I think they were in regular
6 communication and were trying to be aware of
7 where these issues were being handled.

8 Q. (BY MR. ORTIZ) Well, when you say they
9 were in regular communication, are you talking
10 about with Board staff members?

11 A. Yes.

12 Q. So do you know if Board of Governors
13 staff members told your staff that your decision
14 could not contradict the Board's decision on
15 membership?

16 A. I have no knowledge that they would have
17 been given that direction.

18 Q. Would your chain of command dealing with
19 the master account application, they wouldn't
20 have authority on their own to say, "We have to
21 make a decision that is consistent with the
22 Board's decision on membership. They wouldn't
23 have that authority, would they?

24 MR. MICHAELSON: Object to form.

25 A. They would not have that authority.

1 Q. (BY MR. ORTIZ) That would have to come
2 from you or someone at the Board of Governors, if
3 your staff is being directed on the timing and
4 how the vote has to go, correct?

5 A. That would have not have been a decision
6 of my staff.

7 Q. And you're saying that decision did not
8 come from you, correct?

9 A. What decision, the timing?

10 Q. The decision that we have to be in sync
11 on the timing, meaning we have to make our master
12 account decision at the time they make the
13 membership decision, you're saying you did not
14 give that directive, correct?

15 MR. MICHAELSON: Object to form.

16 A. I did not ask for our decision to be in
17 sync.

18 Q. (BY MR. ORTIZ) And more importantly,
19 you're saying you never gave a directive to your
20 staff that your decision on the master account
21 could not contradict whatever decision they made
22 on membership. You're saying you never gave that
23 directive either; is that correct?

24 A. We were quite interested in the factors
25 that the Board of Governors would be considering

1 for that membership application.

2 Q. My question is a lot simpler. You never
3 gave a directive to your staff that the master
4 account decision had to be consistent with the
5 Board's decision on membership. You never gave
6 that directive, did you?

7 A. I gave no such directive.

8 Q. So if your staff believed that that's
9 how these decisions had to go, that had to come
10 from someone outside the Kansas City Federal
11 Reserve, agreed?

12 MR. MICHAELSON: Object to form and
13 foundation.

14 A. I'm not sure they would have viewed that
15 as a directive.

16 Q. (BY MR. ORTIZ) Have you seen the
17 e-mails and the paperwork in this case where
18 that's exactly what your Board staff believed had
19 to occur based on directives they received?

20 MR. MICHAELSON: Object to form and
21 foundation, misstates the documents and the
22 record.

23 Q. (BY MR. ORTIZ) Have you seen that
24 paperwork?

25 A. I would not have seen all the e-mail

1 exchange between the Board staff and my team.

2 Q. Were you considering giving a limited
3 type of master account to Custodia in the early
4 Fall of '22, where you give them a master
5 account, but maybe put some safeguards in place
6 on their daily overdraft provisions or other
7 things where they would not put, you know, the
8 Fed at risk?

9 A. In the course of our review we
10 considered a number of scenarios, whether to
11 accommodate the account, manage risk, a number of
12 factors that we were trying to weigh, in terms of
13 appropriate decision-making framework for this
14 case.

15 Q. Did you research the background of
16 Caitlin Long about, you know, her experience and
17 ability to be the CEO of this de novo
18 institution?

19 MR. MICHAELSON: Object to form.

20 A. Our team would have made an assessment
21 of the management capabilities.

22 Q. (BY MR. ORTIZ) Did you do an
23 independent assessment of Caitlin?

24 A. I did not do an independent assessment.

25 Q. What was the report for your team on

1 what they thought about Caitlin Long's
2 capabilities?

3 A. My understanding of Caitlin's
4 capabilities came from her discussion of her
5 experience in one of our early meetings.

6 Q. Did you ever have anybody follow that
7 up, and for instance, verify, you know, what she
8 did for Morgan Stanley over the years, or verify
9 her background and experience with digital assets
10 and blockchain technology? Did you have anybody
11 actually, you know, kind of run that to ground to
12 truly verify?

13 A. It would be customary for our team to
14 make that kind of decision.

15 Q. So ultimately did you get a
16 recommendation that she was knowledgeable and
17 experienced with this kind of endeavor?

18 A. We were looking at the whole of this
19 bank management's team ability to operationalize
20 a depository institution.

21 Q. And what do you recall the assessment
22 from your team being about the management team as
23 a whole?

24 A. I recall that they were concerned that
25 this management team lacked experience in the

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 192

1 in the chain of command.

2 A. Okay.

3 Q. But you wouldn't know that one way or
4 another?

5 A. Christi would know that.

6 Q. So Ashle Baxter, Ben McGhee, Nancy
7 Fitzgerald no one that you're generally familiar
8 with?

9 A. I do know who Nancy Fitzgerald is.

10 Q. Who is she?

11 A. She's worked in the bank supervision
12 area for a number of years in our capital and
13 policy area.

14 Q. So this, if we look down at the bottom
15 of this it says Chris Gaul-Pearson, Manager of
16 Credit Reserves and Risk Management Department.

17 A. I see that.

18 Q. Did you know he was your manager of the
19 Credit Reserves and Risk Management?

20 MR. MICHAELSON: Object to form.

21 A. I see that here. I didn't recognize his
22 name.

23 Q. (BY MR. ORTIZ) Okay. That's a pretty
24 important position for the Kansas City Fed, isn't
25 it?

1 A. It is a first level supervisory
2 position.

3 Q. And the CRRM Department is -- kind of
4 basically has got the lead on the whole risk
5 assessment with Custodia, right?

6 A. That would be their area of
7 responsibility, yes.

8 Q. So I want to look at this. It says,
9 "Good afternoon. CRRM is working on a memo to
10 Esther regarding a potential decision on
11 Custodia's master account."

12 So this is December 6th, 2022. Did you
13 have an idea in early December they were working
14 on a memo for you on a potential decision?

15 A. So I wouldn't put the dates exactly
16 here, but in this timeframe, I would have asked
17 this team to begin to pull together a memo that
18 would state our position in potentially denying
19 this request.

20 Q. So this also says, "This is moving
21 pretty quick and there are some gaps that Judith,
22 Christi and I would like your help filling in,
23 given you are the experts. Do you have any idea
24 what that means, what gaps needed to be filled in
25 now that this was moving quick?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 194

1 A. I do not know what gaps they are
2 referring to here.

3 Q. Then I want to look at the middle
4 paragraph where it says, "Ben - at this time I
5 have been asked to see if you could help us make
6 sure we are not getting out of sync with the
7 membership side. We do not want to contradict
8 one another."

9 And you've already told me that's not a
10 directive that you gave, correct?

11 A. Correct.

12 Q. So you don't who gave this direction to
13 Chris Gaul-Pearson when he's directing his team
14 that he's been asked to see if you could help
15 make sure we're not getting out of sync, and that
16 we do not contradict one another, you don't know
17 who gave that direction to Chris Gaul-Pearson
18 then, do you?

19 A. It's not clear that there was a
20 directive here, as opposed to a desire to make
21 sure that we had a fulsome picture of how
22 everyone was looking at this information.

23 Q. Well, when someone up the chain of
24 command says, "I have been asked to see if you
25 could help us make sure that we are not getting

1 out of sync with membership side," that's not
2 discretionary, is it? That's: Make sure we
3 don't do that.

4 MR. MICHAELSON: Object to form and
5 foundation.

6 A. I think it's to make sure we are aware
7 of how others are looking at the same risk and
8 how they are describing this.

9 Q. (BY MR. ORTIZ) And when we say, "We do
10 not want to contradict one another," the only
11 explanation for that is you don't want to grant a
12 master account if they deny membership or
13 vice-versa, correct?

14 A. Would you state that question again.

15 Q. Sure. When this talks about not getting
16 out of sync with the membership side, and then it
17 says we do not to want contradict one another,"
18 the only explanation for that is if they are
19 denying membership, you should be denying a
20 master account and vice-versa. If they are
21 granting membership, you need to grant a master
22 account. That's what that means, doesn't it, to
23 not contradict one another?

24 MR. MICHAELSON: Object to form.

25 A. No, I would not interpret it that way at

1 all.

2 Q. (BY MR. ORTIZ) Then tell me how we
3 should interpret that.

4 A. I think the interpretation of this, as I
5 was talking to this team, is this was relevant
6 information to us to understand how risks
7 associated with this membership application were
8 being viewed.

9 We had already made our own assessment
10 around the nature of concerns we had about the
11 master account, but this was not irrelevant to us
12 in terms of understanding how the risk would be
13 described here.

14 Q. So you're saying that the contradiction
15 would be what then? If they are making, the
16 Board is making a decision on membership, right,
17 correct?

18 A. That's correct.

19 Q. And you're making the determination on
20 master account, correct?

21 A. Correct.

22 Q. But you've already mutually shared all
23 of the information on risk back and forth,
24 haven't you?

25 MR. MICHAELSON: Object to form.

1 A. So there was information-sharing going
2 on, I presume, around that, but contradicting one
3 another might be looking at the same risk and
4 describing it differently, whether intentional
5 or --

6 Q. (BY MR. ORTIZ) You're really just kind
7 of speculating on all of that, aren't you?

8 A. I'm not speculating on the fact that we
9 were making our judgment about this master
10 account based on the information we had.

11 Q. But you are simply speculating about
12 what Chris Gaul-Pearson was directing his team
13 when he said: We do not to want contradict one
14 another?

15 MR. MICHAELSON: Object to form and
16 fashion.

17 A. I was not aware of this conversation.

18 Q. (BY MR. ORTIZ) So do you recall, I'm
19 going to hand you what's already in evidence as
20 Exhibit 51, which is just basically an e-mail
21 communicating to you a memo for your review
22 documenting the analysis of the request by
23 Custodia for a master account. Do you recall
24 generally receiving Exhibit 51 from your team?

25 A. I do recall in this timeframe getting

1 to go back to the paragraph, on the third page
2 where you have deleted and struck out," Custodia
3 has pointed to other financial institutions that
4 Custodia believes have master accounts and are,
5 in part, conducting operations and engaging in
6 activities similar to some of those of which
7 Custodia seeks to engage."

8 Then it says, "Putting aside Custodia's
9 lack of insight as to how other entities may or
10 may not be conducting certain operations or
11 engaging in certain activities." Why did you
12 strike that out?

13 A. So I thought our assessment was focused
14 on what had been proposed to us by Custodia, and
15 this language was not relevant to our analysis
16 here.

17 Q. So let's go to the next page where
18 there's a strike-out under, "Lack of Federal
19 Regulatory Oversight," where it says, "The
20 Reserve Bank has consistently indicated that
21 whether Custodia is subject to Prudential Federal
22 supervision and regulation is an important input
23 into the Reserve Bank's decision regarding a
24 master account." Do you see that?

25 A. Yes.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 210

1 Q. Someone from your team or outside your
2 team had that in the memo for you to consider,
3 right?

4 A. This was one of the original sentences,
5 yes.

6 Q. So why did you strike that out?

7 A. So again, this was referencing
8 conversations, views, and I was trying to focus
9 the lack of Federal oversight on the factual
10 components of this, and that reference is to what
11 we had talked about in the past.

12 Q. So can we agree that if the Board of
13 Governors had granted membership, Custodia
14 becomes Tier 2 under the guidelines, and more
15 probable than not, you grant them a master
16 account agreed?

17 A. If the Board granted membership, it
18 would have changed the analysis we would have put
19 in here, because it would have changed who their
20 prudential supervisor was.

21 Q. Everything you and I have talked about
22 in the last two hours basically goes away, lack
23 of Federal supervision and oversight, and all of
24 this. If they simply give them membership, all
25 of those fears go away and you can grant a master

1 account, right?

2 MR. MICHAELSON: Object to form.

3 A. That is not how I viewed our decision in
4 this case.

5 Q. (BY MR. ORTIZ) Well, would you agree
6 with me more probable than not they would have
7 gotten a master account, had they been granted
8 membership and then been in a Tier 2 institution
9 under the new access guidelines?

10 MR. MICHAELSON: Object to the
11 form, calls for speculation, asked and answered.

12 A. That would have been new information
13 that would have caused us to extend our analysis
14 here, and to understand what the supervisory
15 framework would be for this institution relative
16 to the risk that we were discussing with the
17 master account.

18 Q. (BY MR. ORTIZ) Well, wait a minute. If
19 they are granted membership, you become their
20 supervisory authority as the ARB in their region,
21 don't you?

22 A. I assume that would have been the case.

23 Q. Well, you know exactly how your
24 supervisory framework is set up at the Kansas
25 City Fed, don't you?

1 A. Not in the case of an uninsured
2 depository that was established under the laws of
3 Wyoming. It was unique in the sense of what
4 other Federal laws would apply to this
5 institution.

6 Q. Well, you'd already had more than two
7 years to figure that out. By that point in time
8 you knew it was a permissible activity, you knew
9 they were legally eligible, and you knew the Fed
10 system was embracing these activities with other
11 member banks, and you knew you could supervise
12 and put in any parameters you wanted. What more
13 did you need to know?

14 MR. MICHAELSON: Object to form.

15 A. So I disagree with your characterization
16 of that, because we did not know over that
17 two-year period that a decision was yet pending
18 on legal eligibility.

19 We were still assessing the policy
20 implications of having a uniquely chartered,
21 narrow-scoped institution without Federal
22 supervision uninsured relative to the broader
23 landscape of these crypto-assets, and during that
24 time, the Board of Governors was contemplating
25 guidance to these 12 Reserve Banks on how they

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 241

1 that the only one you've seen say in the last 20
2 years, the S letter?

3 MR. MICHAELSON: Object to form.

4 A. I cannot remember any other S letters.

5 Q. (BY MR. ORTIZ) You can't remember any
6 others?

7 A. It doesn't mean they are not there. I
8 just don't -- I couldn't name one for you.

9 Q. Let me hand you what's already in
10 evidence as Exhibit 37. Is this a copy of the
11 actual denial letter that went out to Caitlin
12 Long at Custodia?

13 A. Yes, I think this is the SR letter.

14 Q. And I apologize, you're right. This was
15 broken down into a short one-page letter that you
16 signed then with an attachment of the summary
17 analysis.

18 A. Yes.

19 Q. Okay, so your team did follow your
20 requests there in the last day or two?

21 A. Yes.

22 Q. Now did you know that this decision had
23 been leaked out to media sources and was being
24 recorded the day before the letter was issued?

25 MR. MICHAELSON: Object to form.

1 A. I was not aware.

2 Q. (BY MR. ORTIZ) If that was leaked out
3 either from the Board of Governors or from
4 someone at the Kansas City Fed, that would be a
5 significant breach of policy and probably law,
6 agreed?

7 MR. MICHAELSON: Object to form and
8 calls for a legal conclusion.

9 A. It would be completely inappropriate.

10 Q. (BY MR. ORTIZ) So the fact that
11 Bloomberg would have been calling my client
12 wanting comment the day before they got the
13 letter about the denial, that would be -- that
14 would raise serious concerns if you knew that was
15 occurring, wouldn't it?

16 A. If I knew it was coming from my staff,
17 of course.

18 Q. So I want to talk about this whole idea
19 then. Who set the timing for your letter to be
20 issued on the 27th?

21 A. So we discussed the timing of this
22 letter, because I was within a few days of
23 leaving the Federal Reserve. By that point we
24 had gotten what I thought we were going to get.
25 We had the account access guidance had been

1 issued, the issue of legal eligibility had been
2 decided, and there was no sense that some of the
3 broader policy issues that I was hoping to see
4 resolved were going to be resolved in a timely
5 manner.

6 Q. So you had never even --

7 MR. MICHAELSON: Hold on, let the
8 witness finish, please.

9 Q. (BY MR. ORTIZ) I apologize.

10 A. So given that timing, and given the fact
11 that Custodia had filed a lawsuit challenging the
12 timing, I felt we should make a decision here
13 that we would be able to take the information
14 that we had, and that before I transitioned out
15 of the organization, it would be responsible for
16 us to give them that decision.

17 Q. Had Custodia not filed the lawsuit,
18 would have been content just to continue to let
19 it sit and wait to see if somebody would make a
20 policy determination?

21 MR. MICHAELSON: Object to form,
22 calls for speculation.

23 A. I think at this point I did not see a
24 timeframe in which these issues were going to be
25 resolved by Congress, by the banking agencies and

1 others, and I was leaving, regardless.

2 Q. (BY MR. ORTIZ) So really the majority
3 of the issues that you told me that you had
4 concerns about, the broad policy considerations,
5 things you wanted Congress considering, maybe the
6 Board of Governors considering you never got an
7 answer to any of those questions; is that right?

8 MR. MICHAELSON: Object to form,
9 misstates testimony.

10 A. Yeah, the broad policy issues had not
11 been codified and resolved in my view.

12 Q. (BY MR. ORTIZ) Okay. So how long
13 before January 27th did you have insight from
14 your staff through the Board of Governors that
15 membership was being denied for Custodia?

16 MR. MICHAELSON: Object to form.

17 A. I would not have had insight in the
18 sense that this was going to be a decision of the
19 Board of Governors and my staff had participated
20 in the pre-membership exam, the assessment, I
21 knew clearly what the nature of the risk issues
22 that they discovered, the gaps and compliance and
23 other aspects of that operation, but all I knew
24 is that they were going to be making a decision
25 at some point, and I knew I was leaving by the

1 end of January and would need to make our
2 decision before I went out the door.

3 Q. (BY MR. ORTIZ) Would you have known
4 about the Board staff's recommendation to the
5 Board of Governors to deny membership?

6 A. I think at the point that we were making
7 our decision here was into the Fall, in December,
8 so ahead of January we were talking about the
9 fact, we were not -- these bigger issues aren't
10 going to be resolved in the timeframe that we
11 need to.

12 We know what's been resolved, and we
13 know what the risk issues are here, and so we
14 should proceed to put together our assessment and
15 our denial of this master account.

16 Q. My question is more directed to the
17 membership decision. Would it be fair to say
18 that you knew weeks or months in advance that
19 Custodia wasn't going to get Federal membership
20 granted?

21 A. That would not be fair to say I knew
22 that.

23 Q. You had a strong suspicion.

24 A. I was often asking my staff what they
25 were hearing, and what we were hearing was these

1 are the issues that we are laying out under the
2 factors that the Board has to assess in making a
3 determination.

4 Q. So was the feedback that you were
5 getting from the Board staff through your staff,
6 there's big concerns on all of these issues and
7 they are not going to get membership?

8 MR. MICHAELSON: Object to form,
9 misstates testimony.

10 A. I think we were hearing there were big
11 issues. The second part of that was not clear
12 that they were going to.

13 Q. (BY MR. ORTIZ) Did you hear that
14 Custodia was being pressured to withdraw their
15 membership application?

16 A. I was not aware Custodia was being
17 pressured. It was in the normal course, when an
18 application does not look like it's destined for
19 approval, to give the applicant an opportunity to
20 make that decision.

21 Q. To withdraw?

22 A. To withdraw.

23 Q. Is that some type of black eye or
24 something, if you apply for membership and are
25 denied, does that somehow cause you future harm

1 or detriment?

2 A. I think we leave that to the applicant's
3 judgment about how they view the consequence of a
4 decision like that.

5 Q. Do you have any knowledge of anyone,
6 either you or anyone on your team talking to the
7 FDIC about a decision not to serve or not to have
8 let Cross River Bank serve as the corresponding
9 bank for Custodia?

10 A. I am not aware of that, no.

11 Q. Have you heard that in any context, that
12 Cross River Bank was being pressured by their
13 regulator to not get into business with Custodia?

14 A. I have not heard that.

15 Q. If, in fact, that occurred, that someone
16 from the Kansas City Fed reached out to the FDIC
17 and made some statement or comment that Cross
18 River shouldn't be doing business with Custodia,
19 that would be illegal, wouldn't it?

20 MR. MICHAELSON: Object to form,
21 calls for speculation, calls for a legal
22 conclusion.

23 A. I can't imagine that anyone would do
24 that. I have had no experience with a member of
25 our staff doing that.

1 MR. MICHAELSON: Object to form and
2 foundation.

3 A. It would be typical to say this guidance
4 supersedes previous guidance.

5 Q. (BY MR. ORTIZ) Let me talk to
6 co-counsel for a minute if we could, Counsel.
7 Let's take a quick break?

8 MR. MICHAELSON: Okay.

9 MR. ORTIZ: We're winding down
10 pretty well.

11 (Brief recess taken.)

12 Q. (BY MR. ORTIZ) So did you have
13 information shared with you what on the same day
14 you were going to be announcing the denial of
15 Custodia's master account application, that the
16 White House would be issuing a press release
17 basically on the dangers of crypto-currency?

18 A. I was not aware of the White House
19 announcement.

20 Q. Were you surprised then when it all kind
21 of came out within minutes of each other, your
22 decision, the membership denial, and then the
23 White House issuing a statement?

24 A. I was mostly focused on the Board of
25 Governors' decision-making release, and how it

1 coincided with ours.

2 Q. So did you find out that same day that
3 the White House had issued this press release on
4 crypto?

5 A. I saw it in the news.

6 Q. But you had no heads up that was coming
7 from anyone?

8 A. I did not. It wasn't a factor in my
9 decision.

10 Q. Is there another reason that you did not
11 think Custodia was entitled to a master account
12 that you and I have not talked about today?

13 MR. MICHAELSON: Objection, form.

14 A. I believe we've covered all the reasons.

15 MR. ORTIZ: Okay. I appreciate
16 your patience with me today. That's all the
17 questions I have, although I think he's going to
18 have a bunch more for you, and then I get to come
19 back and ask more questions.

20 THE WITNESS: Okay.

21 EXAMINATION

22 BY MR. MICHAELSON:

23 Q. All right. Thank you. First, I'd just
24 like to designate the transcript confidential.

25 Okay, so Ms. George did there come a

1 time when Custodia's request for a master account
2 was denied?

3 A. Yes.

4 Q. Okay, and who made the decision to deny
5 that request?

6 A. So this was a decision in consultation
7 with my team, but given its nature I signed the
8 letter on behalf of the bank.

9 Q. So would you say it was your decision?

10 A. Yes.

11 Q. And when did you arrive at that
12 decision?

13 A. So I think the concerns that we had
14 ultimately when we got to the Fall of 2022 had
15 led me to think this is the direction that we
16 were heading and this was the appropriate
17 decision, given all the information that we had
18 from that point.

19 Q. Do you recall whether a pre-membership
20 exam was conducted by FRBKC staff in the Fall of
21 '22?

22 A. Yes. I was aware that our team was
23 conducting that review.

24 Q. And did the results of that review
25 factor in at all into your decision to deny

1 Custodia's master account request?

2 A. Yes. The assessment that that team saw
3 with their firsthand look at policies, the
4 compliance programs and other aspects of the
5 risk, did inform our decision.

6 Q. And what were the primary drivers in
7 your decision to deny Custodia's master account
8 request?

9 A. So our decision is outlined in the memo
10 that was attached to the letter. It had to do
11 with the risk involved, the risk to the Reserve
12 Bank, the risk to the financial system, and the
13 nature of the volatility, the assets, that there
14 were broad public policy issues that would have
15 implications potentially.

16 We had seen inadequacies in the policies
17 and procedures, the operational components, had
18 raised questions about the management's ability
19 to establish a risk management program for this
20 institution, and also had raised questions about
21 ultimately in the event of a failure, how the
22 resolution of this institution would be handled,
23 which is a very relevant factor in considering
24 stability and implications of a failure.

25 Q. Can you explain what you mean by that

1 last point, the risk presented by potential
2 failure?

3 A. So in our traditional banking system,
4 the FDIC for insured institutions is the
5 resolution authority, and there are very long
6 tested processes for the failure of an
7 institution and how it's resolved.

8 This would have been something new for
9 the State of Wyoming, in terms of being able to
10 handle a resolution like that, and one, of
11 course, which could not have been tested at that
12 point.

13 Q. I see, and did you have a view at that
14 time as to the risks that Custodia might fail?

15 A. I think we had seen such tremendous
16 volatility in the broader industry around this,
17 and we had seen bankruptcies and failures, and so
18 there was a real question about how such
19 volatility would be managed here, what liquidity
20 risk and other issues could arise that would
21 threaten the viability of this institution.

22 Q. Earlier when you described the primary
23 drivers of the decision to deny, you mentioned at
24 the outset the risks to the Reserve Bank. What
25 do you mean by that?

1 A. So the credit risk, the account risk is
2 borne by the Reserve Bank. We are the holder of
3 the account, and having controls around that
4 account, having supervisory authority or access
5 to information that tells us the condition of the
6 institution, access to reporting and other
7 things, affects how we understand what our risk
8 is relative to the money that moves through that
9 account.

10 Q. Okay, and did you have a view as to
11 whether Custodia if granted a master account
12 would present risks to the Reserve Bank?

13 A. Yes, I believed it did pose risks to the
14 Reserve Bank.

15 Q. Okay, and the would you consider that a
16 primary driver of your decision to deny?

17 MR. ORTIZ: Let me object, leading.

18 A. It would have been among the factors
19 that we considered.

20 Q. (BY MR. MICHAELSON) Okay. In
21 connection with the denial, did you deny
22 Custodia's master account request with the intent
23 to favor one type of bank over another?

24 A. Absolutely not. As an institution who
25 understands its public mission here is to foster

1 economic and financial stability, to make sure
2 that the public's trust in financial institutions
3 and the safety and soundness of their operations
4 means that we think carefully about the conduct
5 of those activities, the nature of those
6 activities that are being -- in institutions, and
7 the creation of this new charter was a point at
8 which to say: "What is different about this
9 institution than our traditional framework, where
10 we have many of the levers, enforcement actions,
11 where we have regular oversight, where we have a
12 partnership with the State in many cases to
13 understand the nature of those risks?"

14 This posed a different model that we
15 needed to think through.

16 Q. I mean as a general matter when during
17 your tenure as President of the Federal Reserve
18 Bank of Kansas City, did you prefer larger banks
19 over smaller banks or vice-versa?

20 A. So I did not have a preference for large
21 over small, but I will tell you it was clear in
22 our supervision that we understood that there
23 were a set of banks that were too big to fail in
24 this country, and we were often looking at the
25 regulatory construct that seemed to create undue

1 burdens for smaller institutions.

2 And so I was most familiar with
3 community and regional banks that we supervised
4 in our region. We did not have one of the
5 too-big-to-fail banks in the 10th Federal Reserve
6 District, and so I understood firsthand how
7 important these smaller institutions were to the
8 region.

9 Q. When you arrived at your decision to
10 deny Custodia's master account, did you have an
11 understanding as to whether the Board of
12 Governors had voted on Custodia's master account
13 request?

14 A. The Board of Governors would not have
15 voted on this. This was not within their
16 purview, and at no time in my conversations with
17 them did I get any sense they were interested in
18 making a decision on this question that they had
19 raised.

20 Q. Can you explain that further? What is
21 the basis for that?

22 A. So in my conversations asking them to
23 give me a broader picture of how they were
24 thinking about the policies associated with
25 crypto-assets more generally, what they saw as

1 financial stability issues, implications for
2 monetary policy, there was never an indication,
3 in fact, more often than not, Governor Brainard
4 would indicate: "This is your decision. I'm
5 happy to understand what you're asking. I
6 understand that you see this has other
7 ramifications," but at no time did any of the
8 Governors offer me any counsel or suggestions on
9 the master account.

10 Q. But yet the time that you made the
11 decision to deny the request, was it your
12 understanding that the Board of Governors had not
13 voted on Custodia's master account request?

14 A. When we decided on the master account, I
15 was -- I don't think they had scheduled a vote on
16 the membership application.

17 Q. Right, but I'm asking about the master
18 account request. It was your understanding that
19 the Board of Governors had not voted on a master
20 account request?

21 A. They were not going to vote on the
22 master account. This was not part of any action
23 they were going to take.

24 Q. Did you have an understanding as to when
25 you denied the request as to whether the Board of

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 261

1 Governors had reached a consensus on whether to
2 grant or deny Custodia's master account request?

3 A. I was never aware of a consensus, and,
4 in fact, from time to time it was clear to me
5 that they did not have a clear view or a
6 consensus around how this should be treated.

7 Q. When you denied the request, was your
8 decision to deny the request controlled by the
9 Board of Governors?

10 A. It was not.

11 Q. Was it dictated by the Board Of
12 Governors?

13 A. It was not.

14 Q. Did you feel that you had the freedom to
15 grant Custodia's master account request if you
16 felt that was appropriate?

17 A. Yes, I did.

18 Q. Do you feel that you could reach that
19 result even if the Board denied membership?

20 A. I think in terms of my authorities I
21 could have done that.

22 Q. All right. I want to go back to when
23 the master account request first came in. When
24 it first came in late 2020, did you have an
25 understanding as to what type of activities

1 Custodia was proposing to do?

2 A. So the original business plan that we
3 discussed had several elements to it in terms of
4 activities, including the issuance of a token,
5 some aspects of custody, and throughout the
6 process that business plan changed on several
7 occasions, as I discussed with my staff on what
8 was being proposed, so there were several
9 iterations of activities that were being
10 proposed.

11 Q. So if you can go back in time to when it
12 first came in and what the initial business plan
13 was, did you have an initial view as to whether
14 to grant or deny the request?

15 A. So I initially had a lot of questions
16 about the nature of the activity and the question
17 really led to seeking out others' views on what
18 are these different activities, what is the
19 nature of risk associated with the different
20 activities that are proposed, what do we see
21 happening in the broader industry, and it was
22 really an effort to say we will need to
23 understand how these things work within the
24 confines of an institution that will be taking
25 deposits and requesting access to the Federal

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 263

1 payment system.

2 Q. You mentioned seeking out other's views.
3 Did you seek out views from the Board of
4 Governors, Board staff?

5 A. So I sought views from the Board of
6 Governors, from my colleagues at the other 11
7 Reserve Banks in terms of their experience in
8 this space.

9 I would have contacted the Conference of
10 the State Bank Supervisors who would have been
11 watching this landscape at the State level unfold
12 for their views on it.

13 Q. And did you feel that you had the
14 authority to reach out to the Board of Governors
15 for their views on these questions?

16 A. I have often reached out to the Board of
17 Governors and their staff to inform decisions, to
18 clarify any number of issues.

19 Q. At any time did you feel that the Board
20 interjected themselves into your decision-making
21 process?

22 A. No, in fact, quite the opposite. I felt
23 like I was having to knock on the door quite a
24 bit to again say: "Are you making decisions? Do
25 you see other parts of the banking agencies that

1 are on the cusp of making decisions about this
2 that I should be aware of as I entertain this
3 request?"

4 Q. So in those early months when you had
5 these questions, again did you have an
6 inclination at times as to whether to grant or
7 deny the request?

8 A. I think initially we had enough
9 questions that I felt like we needed to resolve,
10 and again one of those very foundational
11 questions was this threshold issue of: Are we
12 dealing with an institution that is eligible?

13 That would have then led to a series of
14 other things we had to answer. If for some
15 reason they were not eligible, that would have
16 made moot some of these other questions.

17 Q. Did you personally have a view on
18 whether they were eligible?

19 A. I questioned whether they were eligible.
20 I questioned whether the way this charter had
21 been constructed was consistent with how the laws
22 that governed eligibility had viewed a bank, and
23 so that was really fundamental to the question I
24 was asking the Board of Governors, is to say:
25 Can you interpret that for me? Are you

1 interested in interpreting that?

2 Q. So you mentioned the charter. What was
3 the -- earlier today you answered questions about
4 concerning the novelty of the charter, the novel
5 nature of the charter. What was the significance
6 of a SPDI charter being a novel charter?

7 A. So I guess novel in a couple of ways.
8 Novel in the context of the nature of the
9 activities, so the crypto-asset focus and
10 concentration for the operation of this business
11 model, but novel in the sense that the states
12 have entities that they supervise at the State
13 level that are not connecting to the Federal
14 payment system.

15 And our normal legal regulatory
16 framework has been a different one. It has been
17 one where a dual banking system involves both
18 national and state charters that come with
19 Federal supervision, that addresses any number of
20 issues in that landscape.

21 This charter was explicit that it would
22 be only state-supervised, that it would be
23 uninsured, and that it would intend to connect to
24 either the Federal Reserve or operate with a
25 third-party.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 266

1 Q. Did the novelty of the charter present
2 supervisory issues that differed from supervision
3 of traditional banks?

4 A. Well, to be clear, de novo institutions
5 always have a heightened focus in terms of
6 start-up operations, how quickly they will become
7 profitable, understanding the experience of the
8 management. Those are fairly straightforward in
9 any de novo institution.

10 I think in one that involved a
11 relatively new type of digital asset, digital
12 currency, created another layer both around the
13 concentration risk associated with the narrow
14 activity, and really a broader understanding of
15 what supervisory regime would apply to this,
16 because we did not have models really to look to
17 to say: How do you supervise digital currencies.

18 Q. So what do you mean by that? Why would
19 supervision of Custodia be different than
20 supervision of a traditional bank?

21 A. Well, legal authorities would be one.

22 Q. What do you mean by legal authorities?

23 A. So in this case, for example, if you're
24 not -- if Custodia is not the traditional bank,
25 which it was not, it would be not subject to the

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 267

1 change in the Bank Control Act, it would not be
2 subject to the enforcement authorities, the
3 reporting of data to the Federal Reserve, which
4 of course, feeds into how we evaluate monetary
5 policy and other aspects.

6 This was a different model that was
7 intersecting with one that had other very
8 traditional requirements. It was uninsured.
9 Insurance has been viewed as really core to the
10 stability of our financial system, both in terms
11 of the public's confidence, but also in terms of
12 resolution, authorities in the event of failures
13 of financial institutions.

14 So there were a number of aspects that
15 had been built into the framing of this that gave
16 it a bespoke kind of regulation that didn't
17 align with the institutions that we have been
18 serving through master accounts.

19 Q. Okay. Are there --you mentioned some
20 of the regulatory differences, supervision, that
21 it was uninsured, are there other aspects of
22 supervising Custodia that represented challenges
23 that were different than supervision of a
24 traditional bank?

25 A. In the case of Wyoming, the Kansas City

1 Scott Ortiz wanting to draw money out of his
2 checking account on a debit card and I have zero
3 money in my checking account, when I go to draw
4 something out on a debit card, it won't give me
5 any money because there's nothing in the account,
6 right?

7 A. Correct.

8 Q. That's how a master account works with
9 you guys on a transaction. You can put it in
10 place where if there's no money there, the
11 transaction won't occur, because we won't bear
12 the risk, right? Right?

13 A. That functionality is available, but
14 that is not the entirety of the question that
15 we're asking here.

16 Q. It's the question I'm asking you,
17 though, ma'am.

18 A. And I've answered it.

19 Q. When you're saying --

20 A. That is available.

21 Q. -- that there's these broad risks to the
22 entire system, and somehow you're going to put
23 money at risk, you had the ability to give them a
24 master account, give them a run to see how their
25 model worked, and simply put limitations in place

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 291

1 so you would never have any risk. You had the
2 ability to do that, didn't you?

3 MR. MICHAELSON: Objection, form.

4 A. That was not consistent with the
5 criteria that we considered to grant access to
6 master accounts.

7 Q. (BY MR. ORTIZ) My question is you had
8 the ability to do that, though, didn't you?

9 A. Those capabilities exist.

10 Q. And those existed under your existing
11 SOP guidelines, when you gave somebody a risk
12 rating and decided how much daily credit you
13 would give them, right?

14 A. That is correct.

15 Q. Really a whole set of rules were put in
16 place just for Custodia, weren't they?

17 MR. MICHAELSON: Object to form.

18 Q. (BY MR. ORTIZ) Weren't they,
19 Ms. George, candidly?

20 A. No, we were dealing with a number of
21 evolving issues in the financial system, and
22 Custodia was among those.

23 Q. (BY MR. ORTIZ) Do you think banks that
24 are too big to fail should get preference in
25 being able to engage in activities, because the

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 292

1 government will always bail them out?

2 A. No, I don't.

3 Q. That would seem to be directly contrary
4 to what the Monetary Control Act says, agreed?

5 MR. MICHAELSON: Object to form,
6 calls for a legal conclusion.

7 A. The Monetary Control Act isn't looking
8 at the size of institutions, it's looking at the
9 charter, but yes, it is seeking equity.

10 Q. (BY MR. ORTIZ) So when you said the
11 Board of Governors did not have consensus on
12 whether Custodia should get a master account, how
13 many Board of Governors did you know of that were
14 in favor of Custodia getting a master account,
15 other than Lael Brainard? I'm assuming that
16 Brainard was one of them that wanted them to get
17 a master account; is that right?

18 MR. MICHAELSON: Object to form.

19 A. Actually at no time did I hear a
20 Governor express a view of whether they would
21 grant or not grant a master account.

22 Q. (BY MR. ORTIZ) Then why did you tell
23 counsel under oath that there was no consensus
24 among the Governors?

25 A. Because none was sought.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 293

1 Q. Because none was what?

2 A. None was sought. I wasn't asking for
3 consensus among the Governors, and nor was I
4 going to each of them to understand their views
5 on this.

6 Q. So a better way to say that would be
7 that you don't know whether they were,
8 individuals were in favor of it, or not; is that
9 right?

10 A. I would not know that.

11 Q. The risk management remedial measures
12 that Custodia was putting in place based on
13 issues your team had raised, that's the issues
14 you said you guys never even verified, right?
15 You went ahead and made the decision without even
16 verifying those risk management measures,
17 remediations they put in place; is that right?

18 MR. MICHAELSON: Object to form.

19 A. My recollection is they were in the
20 process of doing remediations, but it was not
21 clear on what timeframe, and we would not have
22 reviewed those with the timing of the letter that
23 we sent in late January.

24 Q. (BY MR. ORTIZ) So you talked at length
25 about this being your decision and the Board not

1 voting formally on the master account decision,
2 but you agree that the Board and its staff worked
3 closely with your staff, were closely involved on
4 all of these issues moving forward over this two
5 and-a-half year timeframe, agreed?

6 MR. MICHAELSON: Objection, form.

7 A. We were seeking input then and sharing
8 information, yes.

9 Q. (BY MR. ORTIZ) Working closely kind of
10 hand-in-glove with the Board and their staff
11 members, agreed?

12 MR. MICHAELSON: Objection, form.

13 A. We were communicating with staff as we
14 normally would.

15 Q. (BY MR. ORTIZ) And as you previously
16 said, there were some issues that were solely the
17 Board's to make, eligibility, permissibility,
18 monetary policy issues, other policy issues,
19 broader policy issues as you've stated, how this
20 will affect the whole system as a whole, how is
21 this going to be viewed in the community, banking
22 community. Those are all, all of those things I
23 just described are questions that you wanted the
24 Board to answer for you, true?

25 MR. MICHAELSON: Objection to form.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 295

1 A. Those were not all the questions that I
2 wanted the Board to answer. There are public
3 policy objectives.

4 Q. (BY MR. ORTIZ) Did I state all the ones
5 at least correctly that you wanted the Board to
6 answer, the ones I just stated, those were all
7 Board decisions you wanted them to make and then
8 you even had more beyond that; is that right?

9 MR. MICHAELSON: Objection to form.

10 A. So I may have to have you repeat those
11 again because monetary policy, yes. Financial
12 stability, you made some reference to the bank's
13 view of this or the -- I'm sorry I didn't hear
14 that.

15 Q. (BY MR. ORTIZ) So let's just list them,
16 all the things you needed the Board to weigh in
17 on. Let's start with the basics. Legal
18 permissibility for this activity, you wanted the
19 Board to weigh in on that, right?

20 MR. MICHAELSON: Objection, form.

21 A. That was my question, how were we
22 treating this.

23 Q. (BY MR. ORTIZ) And you wanted the Board
24 to weigh on and make the decision on eligibility
25 for a master account, correct?

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 296

1 A. Yes.

2 Q. You wanted the Board to weigh in on a
3 monetary policy considerations and make a
4 decision on that, correct?

5 MR. MICHAELSON: Objection to form.

6 A. I was raising questions about the
7 monetary policy implications and asking for their
8 views, not asking for a decision on that.

9 Q. (BY MR. ORTIZ) You were asking them to
10 give you their determination on the financial
11 stability issues associated with Custodia,
12 correct?

13 A. I was asking them what financial
14 stability issues they saw with this.

15 Q. You were asking the Board or others in
16 the system to tell you whether they thought that
17 this would be an accepted banking activity,
18 right?

19 MR. MICHAELSON: Objection, form.

20 A. I was asking whether there was going to
21 be the same treatment of this activity across
22 banks, as well as how we were looking at the
23 Wyoming treatment of this also.

24 Q. (BY MR. ORTIZ) And then you were
25 waiting to see if Congress was going to weigh in

1 on this issue, correct?

2 A. We were trying to understand whether
3 Congress was going to act.

4 Q. You knew the White House was issuing
5 statements or giving at least some thought on
6 whether they were in favor or not in favor of
7 this, correct?

8 MR. MICHAELSON: Objection, form.

9 A. I knew they were issuing public
10 statements about it.

11 Q. (BY MR. ORTIZ) And you were taking that
12 into consideration, as well?

13 A. I was observing it. I didn't see it as
14 a factor.

15 Q. All right. And then you've talked a lot
16 about you had all of these other unanswered
17 policy questions that you wanted the Board to
18 answer. Other than what I have just described,
19 what else did you want the Board answering for
20 you?

21 A. The only answers I needed from the Board
22 was legal eligibility, and I was seeking broader
23 perspective on these other public policy issues
24 and the context, was there information that I
25 should have in making this decision that I might

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 298

1 not be aware of, things like the banking
2 agencies, deciding how do we want to treat the
3 activity in commercial banks, deciding in terms
4 of monetary policy does access to accounts by
5 these non-traditional change how we think about
6 reserve liabilities in the Federal Reserve
7 system, and no one was prepared to address that
8 based on the questions I was asking.

9 Q. Have you described for me completely all
10 the ways you think Custodia caused true monetary
11 risk to your bank or the system as a whole?

12 MR. MICHAELSON: Objection, form.

13 Q. (BY MR. ORTIZ) Because I guess I still
14 don't get it. If Custodia wanted to do a
15 million-dollar transaction on a Saturday in
16 realtime, you had the ability to have the
17 controls in place where they had to have a
18 million dollars in their master account with you
19 for that transaction to go through, right? True?

20 A. That's an example.

21 Q. Sure. And you had the ability to say,
22 "We'll let you do that \$1 million-dollar
23 transaction, because you've got it in your
24 account, but we're not going to give you credit
25 to do a \$10 million-dollar transaction the next

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 299

1 day, because we don't have verifiable funds in
2 the account." You had the ability to put that
3 parameter in place, didn't you?

4 MR. MICHAELSON: Object to form and
5 asked and answered.

6 A. We had that capability.

7 Q. (BY MR. ORTIZ) So then what's, again
8 then, explain to me the financial risk. If
9 you're not extending them credit beyond what's in
10 their master account and they are not asking you
11 to accept crypto as payment, what's the financial
12 risk --

13 MR. MICHAELSON: Objection, form.

14 Q. (BY MR. ORTIZ) -- other than it's a
15 novel idea that you hadn't thought about before?

16 MR. MICHAELSON: Objection, form,
17 argumentative, asked and answered.

18 A. That is a highly concentrated business
19 model around a very monolithic and narrow asset
20 class. It is one of the key historical risks in
21 the failure of a financial institution and
22 instability in the financial system, and the very
23 design of this institution at the outset, on Day
24 1, raised questions about the nature of its risk.

25 And that this would be a precedent of

1 the first one of these to access the Federal
2 payment system, required that we think broadly
3 about: Are we prepared, both in terms of
4 understanding how risk will be assessed. We had
5 to make a judgment about the specific case, the
6 management and how they had demonstrated their
7 ability to manage that heightened risk, and our
8 conclusion was that they were not ready to manage
9 the risk commensurate with how we judge risk to
10 the financial system would be.

11 Q. Have you explained to me then all the
12 reasons that you think they put you at financial
13 risk, "you" being the Kansas City Fed?

14 MR. MICHAELSON: Objection, form,
15 asked and answered.

16 A. I believe our decision letter of
17 January 27th laid out all the reasons that we
18 considered.

19 Q. (BY MR. ORTIZ) If Custodia failed as a
20 start-up, their model didn't work, they weren't
21 making money, are you suggesting somehow that
22 that would impact the overall financial ability
23 of the U.S. financial system --

24 MR. SCARBOROUGH: Stability?

25 Q. (BY MR. ORTIZ) -- financial stability of

1 the U.S. system?

2 A. Is your question for a single
3 institution?

4 Q. Yeah, for Custodia. If Custodia failed
5 as a start-up, are you suggesting that that
6 somehow affects the financial stability of the
7 Federal Reserve system?

8 A. It would in the sense that it would have
9 opened up a precedent, not just for one entity,
10 but for any others to follow.

11 Q. How does opening the precedent of
12 getting a master account equate to adversely
13 affecting overall financial stability?

14 A. So if we had a number of highly
15 concentrated institutions like this at scale, it
16 would pose a threat to the financial stability
17 potentially of the system.

18 Q. Unless you put safeguards in place and
19 made them have money in their account before they
20 did transactions, agreed?

21 A. And all the supervisory --

22 MR. MICHAELSON: Object to form.
23 Go ahead.

24 A. And the supervisory framework with which
25 to judge the valuation of those assets and how

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

Page 302

1 they were being managed, in compliance with
2 relevant laws and regulations.

3 Q. (BY MR. ORTIZ) Did you know that
4 Custodia was actually invited by your staff to
5 remediate the risks and resubmit their risk
6 management plan?

7 A. It would not be unusual for an
8 institution that we've raised questions with to
9 come back at another time and resubmit a request.

10 Q. Would you agree, given the parameters
11 you've talked about, a broad question, if you're
12 a novel start-up wanting to deal with digital
13 assets and you're a State-chartered entity, like
14 Custodia, you can never get a master account.
15 You can't.

16 MR. MICHAELSON: Object to form,
17 calls for speculation.

18 A. I can't answer that question.

19 Q. (BY MR. ORTIZ) You don't see a pathway
20 for that as you sit here right now, though, do
21 you?

22 A. I did not see it as of January 27th.

23 Q. You have been really patient. That's
24 all the questions I have.

25 MR. MICHAELSON: No further

1 questions.

2 THE REPORTER: Do you all want
3 rush, a rough?

4 MR. SCARBOROUGH: Regular is fine
5 for us, yeah.

6 MR. MICHAELSON: I think regular is
7 fine.

8 THE REPORTER: And you all have
9 been getting roughs.

10 MR. ORTIZ: You bet, we'd
11 appreciate that.

12 THE REPORTER: And you, a rough?

13 MR. MICHAELSON: Yes.

14 (Deposition ended at 4:05 p.m.)
15
16
17
18
19
20
21
22
23
24
25